

## **REMARKS**

1. In response to the Office Action mailed September 9, 2009, Applicant respectfully requests reconsideration. Claims 1-38 were last presented for examination. In the outstanding Office Action, claims 1-38 were rejected. By the foregoing Amendments, claim 1 has been amended, claims 2-38 have been cancelled, and claims 39-71 have been added. Thus, upon entry of this paper, claims 1 and 39-71 will be pending in this application. Of these thirty-four (34) claims, four (4) claims (claims 1, 39, 67, and 71) are independent.
2. Based upon the following Remarks, Applicant respectfully requests that all outstanding rejections be reconsidered, and that they be withdrawn.

### ***Claim Rejections under §112***

3. The Examiner has rejected claims 3-4 and 23-24 under 35 U.S.C. 112, second paragraph, for allegedly being indefinite. Specifically, the Examiner states that there is insufficient antecedent basis for the limitation “the ECAP thresholds” in those claims. (See, Office Action, page 2).
4. Applicant has cancelled claims 3-4 and 23-24, thus rendering these rejections moot.
5. Moreover, Applicant’s new claims 40 and 54 each recite “measuring evoked compound action potential (ECAP thresholds,” and Applicant’s new claim 68 recites “wherein the first thresholds are evoked compound action potential (ECAP thresholds.” Applicant submits that the new claims satisfy the requirements of 36 U.S.C. §112.

### ***Claim Rejections under §103***

6. The Examiner has rejected claims 1-38 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,157,861 to Faltys et al. (hereinafter, “Faltys ‘861”) in view of U.S. Patent No. 6,289,247 to Faltys et al. (hereinafter, “Faltys ‘247”). Without addressing the propriety of the Examiner’s combination of Faltys ‘861 and Faltys ‘247, Applicant respectfully requests reconsideration and withdrawal of this rejection for at least the following reasons.

*Claim 1*

7. As amended, Applicant's independent claim 1 recites, in part, “[a] method of fitting an auditory stimulation system having a plurality of channels to a recipient, the method comprising: ... obtaining a response to the applied stimulation; based on the obtained response, adjusting more than one of the first current level settings to effectuate a tilt of the first current level profile about a pivot point on the first current level profile and thereby generate a second current level profile; and applying stimulation using the second current level profile.” (See, Applicant's amended claim 1, above). For at least the reasons discussed below, Applicant submits that Faltys '861 and Faltys '247 do not contain all of the limitations of Applicant's amended claim 1, either individually or in the proposed combination.

8. With regard to Faltys '861, the Examiner states in the Office Action that “Faltys 861 discloses adjusting the initial parameters to conform to patient comfort levels by adding or subtracting current levels, thereby effectively shifting tilting or curving the levels of the parameters.” (See, Office Action, page 3). However, Applicant submits that Faltys '861 fails to disclose “based on the obtained response, adjusting more than one of the current level settings to effectuate a tilt of the first current level profile about a pivot point on the first current level profile,” as recited in Applicant's amended claim 1.

9. Faltys '861 discloses “[a] self-adjusting implantable cochlear implant system.” (See, Faltys '861, Abstract, ln. 1). Faltys '861 discloses “a preferred fitting session that may be used to determine the threshold of hearing (T) and the most comfortable level (MCL) settings for an ICS” with regard to FIG. 4. (See, Faltys '861, col. 13, lns. 32-36; and FIG. 4). This process includes successively increasing a stimulus level S, and eventually setting the threshold of hearing (T) “equal to the most recent value of S . . . less a prescribed small value.” (See, Faltys '861, col. 13, lns. 41-51). Subsequently, stimulus level S is again successively increased, and eventually “the setting for the MCL is determined as the most recent value of S plus a prescribed small value.” (See, Faltys '861, col. 13, lns. 53-67).

10. Additionally, Faltys '861 discloses “one technique for automatically adjusting the loudness after every stimulus cycle during use of the ICS” with regard to FIG. 5. (See, Faltys

‘861, col. 14, lns. 10-53; and FIG. 5). During this process a stimulus level may be incremented or decremented. (See, Faltys ‘861, col. 14, lns. 27-31 and 46-48).

11. Applicant submits that while Faltys ‘861 discloses incrementing and decrementing stimulus levels over time, Faltys ‘861 fails to disclose “based on the obtained response, adjusting more than one of the current level settings to effectuate a tilt of the first current level profile about a pivot point on the first current level profile,” as recited in Applicant’s claim 1. The Examiner even admits that Faltys ‘861 “fails to disclose obtaining a response for a plurality of channels and adjust[ing] the current level setting for a plurality of channels.” (See, Office Action, page 3). The Examiner attempts to cure this defect of Faltys ‘861 by proposing a combination of Faltys ‘861 and Faltys ‘247. However, for at least the following reasons, Applicant submits that this proposed combination does not contain every limitation of Applicant’s claim 1.

12. Faltys ‘247 states that “[t]he invention may thus be characterized as a universal strategy selector for use with a multichannel cochlear prosthesis,” which may be utilized while fitting such a cochlear prosthesis. (See, Faltys ‘247, col. 5, lns. 3-5; and col. 4, lns. 18-22). In a fitting method disclosed by Faltys ‘247, [46-47] “second control signals are sent to [an] ICS.” (See, Faltys ‘247, col. 21, lns. 46-47 and col. 22, ln. 14). Subsequently, “electrical stimuli are applied to the patient through [an] electrode array as defined by the second control signals.” (See, Faltys ‘247, col. 22, lns. 15-16). Next, feedback characterizing the patient’s response to the stimuli is received, and “the second control signals are adjusted, as required, in response to the feedback information received.” (See, Faltys ‘247, col. 22, lns. 18-25). Faltys ‘247 further discloses that control signals used to control an implantable cochlear stimulator (ICS) “specify or define the polarity, magnitude, location . . . , and timing . . . of the stimulation current that is generated by the ICS.” (See, Faltys ‘247, col. 9, lns. 9-10 and 49-54).

13. Applicant submits that Faltys ‘247 does not disclose the specific operation of “adjusting more than one of the current level settings to effectuate a tilt of the first current level profile about a pivot point on the first current level profile,” as recited in Applicant’s amended claim 1. Accordingly, Applicant submits that, while Faltys ‘247 states that “the second control signals are adjusted, *as required*, in response to the feedback information received,” Faltys ‘247 fails to

specifically disclose “based on the obtained response, adjusting more than one of the current level settings to effectuate a tilt of the first current level profile about a pivot point on the first current level profile,” as recited in Applicant’s amended claim 1. (See, Faltys ‘247, col. 22, lns. 22-23; emphasis added). Moreover, Applicant submits that Faltys ‘247 fails to disclose any particular feedback that would require such adjustment.

14. Accordingly, Applicant submits that Faltys ‘247 fails to cure all of the deficiencies of Faltys ‘861. As such, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

*New claims*

*Claim 39*

15. Applicant’s new claim 39 recites, in part, “[a]n apparatus configured to … adjust, based on the obtained response, more than one of the first current level settings to effectuate a tilt of the first current level profile about a pivot point on the profile and thereby generate a second current level profile; and provide the second current level profile to the auditory stimulation system for use in applying stimulation using the second current level profile.” (See, Applicant’s claim 39, above).

16. Accordingly, at least for reasons similar to those discussed above with regard to Applicant’s claim 1, Applicant submits that Applicant’s claim 39 is in condition for allowance.

*Claim 67*

17. Applicant’s new claim 67 recites, in part, “measuring a first threshold for each channel of a first subset of the plurality of channels, wherein the first subset comprises fewer than all of the channels; and determining from the measured first thresholds the current level setting for each channel of the plurality of channels.” (See, Applicant’s claim 67, above). For at least the reasons discussed below, Applicant submits that Faltys ‘861 and Faltys ‘247 do not contain all of the limitations of Applicant’s claim 67, either individually or in the proposed combination.

18. Applicant submits that Faltys ‘861 fails to disclose “measuring a first threshold for each channel of a first subset of the plurality of channels, wherein the first subset comprises fewer

than all of the channels; and determining from the measured first thresholds the current level setting for each channel of the plurality of channels,” as recited in Applicant’s claim 67. For example, Applicant submits that Faltys ‘861 fails to disclose determining current level settings for each channel of the plurality of channels from thresholds measured from fewer than all of the channels.

19. Applicant submits that Faltys ‘247 likewise fails to disclose the above-quoted features of Applicant’s claim 67. For example, Applicant submits that Faltys ‘247 fails to disclose determining current level settings for each channel of the plurality of channels from thresholds measured from fewer than all of the channels.

20. As such, Applicant submits that the proposed combination of Faltys ‘861 and Faltys ‘247 does not contain all of the features of Applicant’s claim 67. Accordingly, Applicant respectfully submits that Applicant’s claim 67 is in condition for allowance.

***Claim 71***

21. Applicant’s new claim 71 recites, in part, “means for obtaining a response to the applied stimulation; mean for adjusting, based on the obtained response, more than one of the first current level settings to effectuate a tilt of the first current level profile about a pivot point on the profile and thereby generate a second current level profile; and means for applying stimulation using the second current level profile.” (See, Applicant’s claim 71, above).

22. Accordingly, at least for reasons similar to those discussed above with regard to Applicant’s claim 1, Applicant submits that Applicant’s claim 71 is in condition for allowance.

***Dependent claims***

23. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

***Conclusion***

24. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

25. Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicant reserves the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

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